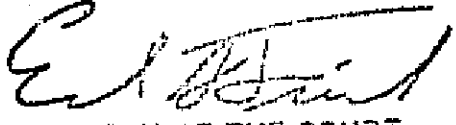


EXHIBIT C

EXHIBIT C

1 **ACOM**
 2 **NIA C. KILLEBREW, ESQ.**
 Nevada Bar No.: 004553
 3 **GERALD I. GILLOCK, ESQ.**
 Nevada Bar No.: 00051
 4 **GILLOCK, MARKLEY & KILLEBREW, P.C.**
 428 So. 4th Street
 Las Vegas, NV 89101
 5 (702) 385-1482
 Attorneys for Plaintiffs
 6 Gwendolyn Martin and Lovey Martin

FILED**MAR 19 3 08 PM '09**

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DISTRICT COURT
CLARK COUNTY NEVADA

11 **GWENDOLYN MARTIN and**
 12 **LOVEY MARTIN,**
 Plaintiffs,

vs.

14 **ENDOSCOPY CENTER OF SOUTHERN**
 15 **NEVADA LLC, a Nevada Limited Liability**
 Company; **GASTROENTEROLOGY**
 16 **CENTER OF NEVADA LLP (DESAI);**
DIPAK DESAI, M.D.;
 17 **HARI OM LIMITED PARTNERSHIP;**
SAI K LLC; ELADIO CARRERA, M.D.;
 18 **KEITH MATHAHS, CRNA; LINDA**
McGREEVY, RN; PEGGY TAGLE, RN;
 19 **LISA FRANKS, P.A.-C.; CLIFFORD**
CARROL, M.D.; KATHY L. GRINDLE, RN;
 20 **KATHLEEN MALEY, RN aka**
KATIE MALEY, RN; JEFF KRUEGER, RN;
 21 **MARY GREAR, R.Ph.; MARY GREAR, LLC**
d/b/a PHARMACY CONSULTING SERVICES
 22 **GROUP; THOMAS C. YEE, M.D.;**
THOMAS C. YEE/LEIGH VANCE/ROLAND
 23 **TIO/EDWIN ADOLFO, MD'S**
PROFESSIONAL ANESTHESIA
 24 **CONSULTANTS LTD.; LEIGH VANCE, M.D.;**
ROLAND TIO, M.D.; EDWIN ADOLFO, M.D.;
 25 **SATISH SHARMA, M.D.; SATISH K.**
SHARMA M.D. P.C.; ADVANCED PAIN
 26 **MANAGEMENT CENTER, LLC;**
TONYA RUSHING; BROADLANE, INC., a
 27 **Delaware Corporation; BEN VENUE**
LABORATORIES, INC., a Delaware
 28 **Corporation; TEVA PARENTERAL**
MEDICINES, INC., formerly known as SICOR
PHARMACEUTICALS, INC.;

CASE NO.: A558827**DEPT. NO.: VIII**

SECOND AMENDED
COMPLAINT AND DEMAND
FOR JURY TRIAL

ARBITRATION EXEMPTION
CLAIMED:
MEDICAL MALPRACTICE
AND CLAIMS IN EXCESS OF
\$50,000.00

1 SICOR, Inc., a Delaware Corporation;)
 2 BAXTER HEALTHCARE CORPORATION,)
 a Delaware Corporation;)
 3 McKESSON MEDICAL-SURGICAL INC.,)
 a Delaware Corporation; VED GREEN)
 4 VALLEY, INC. d/b/a GREEN VALLEY)
 DRUGS; QUALITY CARE CONSULTANTS)
 LLC, a Nevada Limited Liability Company;)
 5 DOES I through XX; and ROE)
 CORPORATIONS I through XX, inclusive,)
 6
 Defendants.)

7
 8 COMES NOW, Plaintiffs, GWENDOLYN MARTIN and LOVEY MARTIN, by and
 9 through their attorneys of record, NIA C. KILLEBREW ESQ. and GERALD I. GILLOCK, ESQ
 10 of GILLOCK, MARKLEY & KILLEBREW, P.C., and hereby complain and allege as follows:

11 **I.**

12 **PARTIES AND JURISDICTION**

13
 14 1. Plaintiff, GWENDOLYN MARTIN, is, and at all times relevant hereto was, a citizen
 15 of the State of Nevada.

16 2. Plaintiff, LOVEY MARTIN, is, and at all times relevant hereto was, a citizen of
 17 the State of Nevada.

18 3. Upon information and belief, ENDOSCOPY CENTER OF SOUTHERN NEVADA
 19 LLC, (hereinafter referred to as the "CLINIC") is a Nevada Limited Liability Company, chartered by
 20 and existing under and by virtue of the laws of the State of Nevada, having its principal place of
 21 business in Las Vegas, Nevada.

22
 23 4. GASTROENTEROLOGY CENTER OF NEVADA LLP (DESAI) (hereinafter
 24 referred to as "GCN") is, and at all times relevant hereto was, a medical facility duly licensed to do
 25 business in the State of Nevada pursuant to NRS 630.0135, with its principal place of business in Las
 26 Vegas, Nevada.

27
 28 5. DIPAK DESAI, M.D. (hereinafter "DESAI"), is and was at all relevant times herein, a

1 physician licensed to practice medicine in the State of Nevada pursuant to NRS Chapter 630.

2 6. HARI OM LIMITED PARTNERSHIP (hereinafter "HARI OM"), is, and was at all
3 times relevant herein, a Nevada Limited Partnership, chartered by and existing under and by virtue
4 of the laws of the State of Nevada, having its principal place of business in Las Vegas, Nevada.

5 7. SAI K LLC (hereinafter "SAI"), is, and was at all times relevant herein, a Nevada
6 Limited Liability Company, chartered by and existing under and by virtue of the laws of the State of
7 Nevada, having its principal place of business in Las Vegas, Nevada.

8 8. ELADIO CARRERA, M.D. (hereinafter referred to as the "OPERATING
9 PHYSICIAN") is, and was at all relevant times herein, a physician licensed to practice medicine in
10 the State of Nevada pursuant to NRS Chapter 630.

11 9. KEITH MATHAHS, CRNA (hereinafter referred to as "CRNA") is, and was at all
12 relevant times herein, a Certified Registered Nurse Anesthetist licensed to practice in the State of
13 Nevada.

14 10. LINDA McGREEVY, RN (hereinafter referred to as "RN") is, and was at all relevant
15 times herein, a Registered Nurse licensed to practice nursing in the State of Nevada.

16 11. PEGGY TAGLE, RN (hereinafter referred to as "RN") is, and was at all relevant
17 times herein, a Registered Nurse licensed to practice nursing in the State of Nevada.

18 12. LISA FRANKS, P.A.-C. (hereinafter "GASTRO"), is and was at all times relevant
19 herein, a physician and/or physician's assistant and/or nurse practitioner and/or clinic licensed to
20 practice medicine or provide medical care in the State of Nevada.

21 13. CLIFFORD CARROL, M.D. (hereinafter "GASTRO"), is and was at all times
22 relevant herein, a physician and/or physician's assistant and/or nurse practitioner and/or clinic
23 licensed to practice medicine or provide medical care in the State of Nevada.

1
2
3 14. KATHY L. GRINDLE, RN (hereinafter referred to as "CHARGE NURSE") is, and
4 was at all relevant times herein, a Registered Nurse licensed to practice nursing in the State of
5 Nevada.

6 15. KATHLEEN MALEY, RN aka KATIE MALEY, RN (hereinafter "MALEY"), is and
7 was at all relevant times herein, a Registered Nurse licensed to practice nursing in the State of
8 Nevada.

9
10 16. JEFF KRUEGER, RN (hereinafter "KRUEGER"), is and was at all relevant times
11 herein, a Registered Nurse licensed to practice nursing in the State of Nevada.

12 17. MARY GREAR, R.Ph (hereinafter "SUPERVISING PHARMACIST"), is, and was at
13 all relevant times herein, a pharmacist and/or pharmacy licensed to practice in the State of Nevada.

14 18. MARY GREAR, LLC d/b/a PHARMACY CONSULTING SERVICES GROUP
15 (hereinafter "SUPERVISING PHARMACIST"), is, and was at all times relevant herein, a Nevada
16 Limited Liability Company, chartered by and existing under and by virtue of the laws of the State of
17 Nevada, having its principal place of business in Las Vegas, Nevada.

18
19 19. THOMAS C. YEE, M.D. (hereinafter "ANESTHESIOLOGIST"), is, and was at all
20 times relevant herein, a physician licensed to practice medicine in the State of Nevada pursuant to
21 NRS Chapter 630.

22
23 20. THOMAS C. YEE/LEIGH VANCE/ROLAND TIO/EDWIN ADOLFO, MD'S
24 PROFESSIONAL ANESTHESIA CONSULTANTS LTD. (hereinafter "ANESTHESIOLOGIST"),
25 is, and was at all times relevant herein, a Nevada Limited Partnership, chartered by and existing
26 under and by virtue of the laws of the State of Nevada, having its principal place of business in Las
27 Vegas, Nevada.
28

1 21. SATISH SHARMA, M.D. (hereinafter "ANESTHESIOLOGIST"), is, and was at all
2 times relevant herein, a physician licensed to practice medicine in the State of Nevada pursuant to
3 NRS Chapter 630.
4

5 22. SATISH K. SHARMA M.D. P.C. (hereinafter "ANESTHESIOLOGIST"), is, and was
6 at all times relevant herein, a corporation chartered and existing under and by virtue of the laws of
7 the State of Nevada, with its principal place of business in the State of Nevada.
8

9 23. ADVANCED PAIN MANAGEMENT CENTER, LLC, (hereinafter
10 "ANESTHESIOLOGIST") is, and was at all times relevant herein, a Nevada Limited Liability
11 Company, chartered by and existing under and by virtue of the laws of the State of Nevada, having
12 its principal place of business in Las Vegas, Nevada.
13

14 24. LEIGH VANCE, M.D. (hereinafter "ANESTHESIOLOGIST"), is, and was at all
15 times relevant herein, a physician licensed to practice medicine in the State of Nevada pursuant to
16 NRS Chapter 630.

17 25. ROLAND TIO, M.D. (hereinafter "ANESTHESIOLOGIST"), is, and was at all times
18 relevant herein, a physician licensed to practice medicine in the State of Nevada pursuant to NRS
19 Chapter 630.
20

21 26. EDWIN ADOLFO, M.D. (hereinafter "ANESTHESIOLOGIST"), is, and was at all
22 times relevant herein, a physician licensed to practice medicine in the State of Nevada pursuant to
23 NRS Chapter 630.
24

25 27. TONYA RUSHING (hereinafter "RUSHING"), is and was at all relevant times
26 herein, a citizen of the State of Nevada.
27

28 28. BROADLANE, INC., (hereinafter referred to as "BROADLANE") is, and was at all
relevant times referenced herein, a corporation chartered and existing under and by virtue of the laws

1 of the State of Delaware, with its principal place of business in the State of Texas and is and was in
2 the business of marketing, distributing, and selling propofol and other medical products utilized by
3 physicians and health care providers in connection with the provision of anesthesia services to
4 patients at the CLINIC.
5

6 29. BEN VENUE LABORATORIES, INC., (hereinafter referred to as "BEN VENUE")
7 is, and was at all relevant times referenced herein, a corporation chartered and existing under and by
8 virtue of the laws of the State of Delaware, with its principal place of business in the State of Ohio,
9 and is and was in the business of marketing, distributing, and selling propofol and other medical
10 products utilized by physicians and health care providers in connection with the provision of
11 anesthesia services to patients at the CLINIC.
12

13 30. Defendant, TEVA PARENTERAL MEDICINES, INC., formerly known as SICOR
14 PHARMACEUTICALS, INC., and SICOR, INC. (hereinafter collectively referred to as "SICOR")
15 are, and were at all relevant times herein, corporations chartered by and existing under and by virtue
16 of the laws of the State of Delaware, with their principal place of business in the State of California
17 and are and were in the business of manufacturing, marketing, distributing, and selling propofol and
18 other medical products utilized by physicians and health care providers in connection with the
19 provision of anesthesia services to patients at the CLINIC.
20

21 31. Defendant, BAXTER HEALTHCARE CORPORATION (hereinafter referred to as
22 "BAXTER") is, and was at all relevant times herein, a corporation chartered by and existing under
23 and by virtue of the laws of the State of Delaware, with its principal place of business in the State of
24 Illinois and is and was in the business of manufacturing, marketing, distributing, and selling
25 propofol and other medical products utilized by physicians and health care providers in connection
26 with the provision of anesthesia services to patients at the CLINIC.
27
28

1 32. Upon information and belief, Defendant, McKESSON MEDICAL-SURGICAL INC.
2 (hereinafter referred to as "McKESSON") is, and was at all relevant times herein, a corporation
3 chartered by and existing under and by virtue of the laws of the State of Delaware, with its principal
4 place of business in the State of California and is and was in the business of marketing, distributing,
5 and selling propofol and other medical products utilized by physicians and health care providers in
6 connection with the provision of anesthesia services to patients at the CLINIC.
7

8 33. Upon information and belief, VED GREEN VALLEY, INC. d/b/a GREEN VALLEY
9 DRUGS (hereinafter referred to as "SUPPLYING PHARMACIST/PHARMACY"), is, and was at all
10 relevant times herein, a pharmacist and/or pharmacy licensed to practice in the State of Nevada and
11 is and was in the business of marketing, distributing, and selling propofol and other medical products
12 utilized by physicians and health care providers in connection with the provision of anesthesia
13 services to patients at the CLINIC.
14

15 34. Jurisdiction is conferred pursuant to NRS 14.080 in so far as Defendants,
16 BROADLANE, BEN VENUE, SICOR, BAXTER, McKESSON and/or SUPPLYING
17 PHARMACIST/PHARMACY manufactured, marketed, distributed and/or sold propofol, which was
18 administered to Plaintiff in connection with the medical procedure(s) at the CLINIC in Nevada. It is
19 reasonably foreseeable to Defendants, BROADLANE, BEN VENUE, SICOR, BAXTER,
20 McKESSON and/or SUPPLYING PHARMACIST/PHARMACY, that when its products entered the
21 State of Nevada, that Defendants could be expected to be sued in the state where its products caused
22 the injury.
23

24 35. Jurisdiction is appropriate under the Due Process Clause. Upon information and
25 belief, Defendants, BROADLANE, BEN VENUE, SICOR, BAXTER, McKESSON and/or
26 SUPPLYING PHARMACIST/PHARMACY were aware of the national distribution system and as a
27
28

1 consequence of that awareness, Defendants indirectly and/or directly served the national market and
 2 derived economic benefit therefrom. As such, Defendants could reasonably anticipate being subject
 3 to suit in any forum within that market where their product caused injury.
 4

5 36. Upon information and belief, QUALITY CARE CONSULTANTS LLC, (hereinafter
 6 referred to as "INSPECTION ENTITY") is, and was at all relevant times referenced herein, a Nevada
 7 Limited Liability Company, chartered by and existing under and by virtue of the laws of the State of
 8 Nevada, having its principal place of business in Las Vegas, Nevada.
 9

10 37. The true names and capacities, whether individual, corporate, associate, or otherwise
 11 of Defendants, DOES I through XX, inclusive, and Defendants, ROE CORPORATIONS I through
 12 XX, inclusive, are unknown to Plaintiff(s), and are believed to be owners, operators, partners and/or
 13 managing agents of the CLINIC, physicians, certified registered nurse anesthetists, registered nurses,
 14 physician's assistants, medical assistants/technicians, pharmacists or other health care providers who
 15 provided care and treatment to Plaintiff and/or who supervised those providing care and treatment to
 16 Plaintiff, owners, operators, partners and/or managing agents of GASTRO, SUPERVISING
 17 PHARMACIST/PHARMACY, ANESTHESIOLOGIST and/or INSPECTION ENTITY, and/or are
 18 manufacturers, marketers, distributors, suppliers and/or sellers of anesthetic agents and medical
 19 devices, including but not limited to the "spike" or "vent spike" utilized to facilitate multiple access
 20 to propofol vials, utilized by physicians and health care providers in connection with the provision of
 21 anesthesia services to patients at the CLINIC at the relevant time periods who, therefore, sue(s) said
 22 Defendants by such fictitious names but are believed to be agents, servants, and/or employees of
 23 Defendants. Plaintiff(s) is/are informed and believe(s), and therefore allege(s), that each of the
 24 Defendants designated as a DOE and/or ROE CORPORATION are responsible in some manner for
 25 the events and happenings herein referred to, and caused injury and damages proximately thereby to
 26
 27
 28

1 Plaintiff(s), as herein alleged; that such DOE Defendants and ROE CORPORATIONS Defendants
 2 were the agents, servants, or employees of each other and, in doing the things herein alleged, each
 3 was acting within the scope and course of said agency, servitude and employment, with the
 4 knowledge, permission and consent of the other Defendants. Plaintiff(s) will ask leave of this Court
 5 to amend this Complaint to insert the true names and capacities of said DOES I through XX,
 6 inclusive and ROE CORPORATIONS I through XX, inclusive, when the same have been
 7 ascertained by Plaintiff(s), together with the appropriate charging allegations and to join such
 8 Defendants in this action.
 9
 10

11 38. At all times relevant herein, Defendants, and each of them, were the agents, servants,
 12 partners and employees of each and every other Defendant, and were acting within the course and
 13 scope of their agency, partnership and employment and, to the extent permitted by law, are jointly
 14 and severally liable.
 15

16 II.

17 GENERAL FACTUAL ALLEGATIONS

18 39. Upon information and belief, Defendant, CLINIC, owned and operated an endoscopy
 19 center located at 700 Shadow Lane, Clark County, Nevada and provided anesthesia services in
 20 connection with its provision of endoscopy procedures to its patients.
 21

22 40. Upon information and belief, Defendant, DESAI, was the principal owner of the
 23 CLINIC and/or HARI OM and/or SAI, and was the medical director and/or operations manager of
 24 the CLINIC during the relevant time period.

25 41. Defendant, OPERATING PHYSICIAN, performed invasive medical procedures
 26 requiring anesthesia at the Defendant CLINIC upon the Plaintiff.
 27

28 42. Defendants, CRNA and RN also performed, assisted and/or observed physicians

1 and/or other health care providers in the performance of medical procedures, including the
2 administration of anesthesia, at the CLINIC.

3
4 43. Defendants, CHARGE NURSE, assisted in the management of the CLINIC,
5 including, ordering of anesthesia and establishing nursing and/or other medical policies and
6 procedures, and also performed, assisted and/or observed physicians and/or other health care
7 providers in the performance of medical procedures including the administration of anesthesia, at the
8 CLINIC.

9
10 44. Defendants, MALEY and/or KRUEGER, assisted in the management of the CLINIC,
11 including, ordering of anesthesia and establishing nursing and/or other medical policies and
12 procedures, and also performed, assisted and/or observed physicians and/or other health care
13 providers in the performance of medical procedures including the administration of anesthesia, at the
14 CLINIC.

15
16 45. Defendant, GASTRO, referred Plaintiff to the Defendant CLINIC where invasive
17 medical procedures requiring anesthesia were performed upon Plaintiff.

18
19 46. Defendant, SUPERVISING PHARMACIST, established policies and procedures for
20 and supervised the ordering, supplying, dispensing and/or administration of anesthesia at the
21 CLINIC.

22 47. Defendants, ANESTHESIOLOGIST, performed, assisted, supervised and/or observed
23 physicians, CRNAs, RNs and/or other health care providers in the performance of medical
24 procedures including the administration of anesthesia at the CLINIC.

25 48. Upon information and belief, Defendant RUSHING was the chief operating officer,
26 chief executive officer and/or office administrator of the CLINIC and participated in the management
27 of the CLINIC, including but not limited to contracting for professional services, ordering of
28

1 anesthesia, billing, establishing CLINIC policies and procedures and supervision of CLINIC
2 personnel including CRNAs and RNs.

3
4 49. During the relevant time period (hereinafter referred to as "relevant time period"),
5 Defendants treated Plaintiff with contaminated medical equipment and/or medications that were
6 previously exposed to unknown persons at the CLINIC, which included utilizing propofol vials
7 manufactured, marketed, distributed and/or sold by BROADLANE, BEN VENUE, SICOR,
8 BAXTER, McKESSON and/or SUPPLYING PHARMACIST/PHARMACY during the relevant
9 time period.
10

11 50. Contaminated vials of propofol are defective products unfit for its intended use
12 as the contaminated propofol vials exposes persons to communicable infectious diseases from the
13 prior persons that the contaminated propofol vials were used upon.
14

15 51. Despite the knowledge of the dangers posed by these unsafe procedures and practices,
16 Defendants concealed and suppressed these material facts that they were bound to disclose in an
17 effort to mislead Plaintiff and others and prevent them from discovering the concealed or suppressed
18 facts.
19

20 52. Plaintiff underwent a certain invasive medical procedures on September 20, 2007 and
21 September 21, 2007, requiring the utilization of anesthesia services at the CLINIC at the relevant
22 time period, as provided by DESAI, OPERATING PHYSICIAN, CRNA, RN, CHARGE NURSE,
23 MALEY, KRUEGER, SUPERVISING PHARMACIST, ANESTHESIOLOGIST and/or RUSHING.

24 Plaintiff is informed and believes that she was exposed to contaminated propofol vials at the
25 CLINIC on September 21, 2007 which resulted in Plaintiff contracting an INFECTIOUS DISEASE.
26 Health officials and health care providers recommended that Plaintiff be tested for Hepatitis B,
27 Hepatitis C and HIV and continue to undergo testing in the future for all of these infectious diseases.
28

53. Plaintiff was tested and diagnosed with Hepatitis C (hereinafter referred to as "INFECTIOUS DISEASE") after undergoing the procedures at the CLINIC, and is also at risk for contraction of other blood borne pathogens all due to the conduct of the Defendants.

54. Attached hereto as Exhibits "1", "2", "3", "4", "5" and "6" are true and correct copies of the merit affidavits of Thomas Hargrave, M.D., Richard A. Singer, M.D., George Cox, CRNA and Dana Sutter, RN, in support of Plaintiffs' claims which are incorporated herein by reference.

III.

NEGLIGENCE

(As to CLINIC, GASTRO, DESAI, OPERATING PHYSICIAN, CRNA, RN, CHARGE NURSE, MALEY, KRUEGER, SUPERVISING PHARMACIST, & ANESTHESIOLOGIST Defendants)

55. Plaintiff hereby adopts and incorporates by reference all prior paragraphs as though fully set forth herein.

56. At all times mentioned herein, Defendants knew, or in the exercise of reasonable care should have known, that the providing of medical care and treatment was of such a nature that, if it was not properly given, it was likely to injure the persons to whom it was given.

57. Plaintiff alleges that Defendants fell below the standard of care for health care providers who possess the degree of professional learning, skill and ability of other similar health care providers in failing to properly treat and/or supervise the treatment of Plaintiff.

58. Plaintiff alleges that Defendants were negligent by failing to correctly treat and/or supervise the treatment of Plaintiff during medical procedures directly resulting in exposure to and contraction of INFECTIOUS DISEASES.

59. As a direct and proximate result of the negligence and carelessness of Defendants in incorrectly treating and/or supervising the treatment of Plaintiff, Plaintiff was required to undergo

1 testing and has contracted an INFECTIOUS DISEASE.

2 60. As a direct and proximate result of the conduct of Defendants, Plaintiff has suffered
3 special damages in an amount in excess of Ten Thousand Dollars (\$10,000.00).
4

5 61. As a direct and proximate result of the conduct of Defendants, Plaintiff has suffered
6 general damages in an amount in excess of Ten Thousand Dollars (\$10,000.00).

7 62. As a further result of Defendants' conduct, Plaintiff has had to retain the services of
8 attorneys in this matter, and therefore seeks reimbursement of attorneys' fees and costs.
9

10 IV.

11 RES IPSA LOQUITUR

12 (As to CLINIC, DESAI, OPERATING PHYSICIAN, CRNA, RN, CHARGE NURSE,
13 MALEY, KRUEGER, SUPERVISING PHARMACIST and
ANESTHESIOLOGIST Defendants)

14 63. Plaintiff hereby adopts and incorporates by reference all prior paragraphs as though
15 fully set forth herein.

16 64. The events herein described do not normally occur absent negligent conduct.
17 Moreover, Plaintiff contracted a foreign substance, that being an INFECTIOUS DISEASE, following
18 the medical procedure at the CLINIC, and an injury was suffered during the course of treatment to a
19 part of the body not directly involved in the treatment or proximate thereto. Plaintiff therefore
20 invokes the doctrine of res ipsa loquitur against CLINIC, DESAI, OPERATING PHYSICIAN,
21 CRNA, RN, CHARGE NURSE, MALEY, KRUEGER, SUPERVISING PHARMACIST and
22 ANESTHESIOLOGIST Defendants pursuant to N.R.S. 41A.100(1) (a) and (d).
23
24

25 65. As a direct and proximate result of the negligence and carelessness of Defendants in
26 incorrectly treating and/or failing to supervise the treatment of Plaintiff, Plaintiff was required to
27 undergo testing and has contracted an INFECTIOUS DISEASE.

28 66. As a direct and proximate result of the conduct of Defendants, Plaintiff has suffered

1 special damages in an amount in excess of Ten Thousand Dollars (\$10,000.00).

2 67. As a direct and proximate result of the conduct of Defendants, Plaintiff has suffered
3
4 general damages in an amount in excess of Ten Thousand Dollars (\$10,000.00).

5 68. As a further result of Defendants' conduct, Plaintiff has had to retain the services of
6 attorneys in this matter, and therefore, seeks reimbursement of attorneys' fees and costs.

7
8 V.

9 **NEGLIGENT HIRING, TRAINING AND SUPERVISION**

10 (As to CLINIC, DESAI, HARI OM, SAI, OPERATING PHYSICIAN, CHARGE NURSE,
11 MALEY, KRUEGER, SUPERVISING PHARMACIST, ANESTHESIOLOGIST,
12 RUSHING and GCN Defendants)

13 69. Plaintiff hereby adopts and incorporates by reference all prior paragraphs as
14 though fully set forth herein.

15 70. At all times mentioned herein, Defendants knew or in the exercise of reasonable care
16 should have known, that providing of medical care and treatment was of such a nature that, if it was
17 not properly given, it was likely to injure the persons to whom it was given. Further, Defendants
18 owed a duty to Plaintiff to hire, train and/or supervise competent medical and staff personnel,
19 including supervisors, adequately trained to provide care and treatment to its patients.

20 71. At all times mentioned herein, Defendants established and/or followed unsafe medical
21 practices, including the reuse of medical equipment and propofol vials, and/or instructed their
22 employees and/or agents to follow these unsafe practices.

23 72. As a result of the medical care and treatment provided by Defendants and Defendants'
24 employees and/or agents, Defendants breached their duty to Plaintiff by failing to protect her from
25 foreseeable harm, resulting in exposure to and contraction of INFECTIOUS DISEASES.

26 73. As a direct and proximate result of the negligence and carelessness of Defendants,
27 Plaintiff is required to undergo testing and has contracted an INFECTIOUS DISEASE.
28

75. Defendants' conduct was willful, reckless, malicious and in total disregard to the health and safety of the patients or, alternatively, was in conscious and deliberate disregard of known safety procedures, thereby justifying an award of punitive damages.

77. As a direct and proximate result of the conduct of Defendants, Plaintiff has suffered general damages in an amount in excess of Ten Thousand Dollars (\$10,000.00).

78. As a direct and proximate result of the conduct of Defendants, Plaintiff has suffered punitive damages in an amount in excess of Ten Thousand Dollars (\$10,000.00).

79. As a further result of Defendants' conduct, Plaintiff has had to retain the services of attorneys in this matter, and therefore, seeks reimbursement of attorneys' fees and costs.

CORPORATE NEGLIGENCE/VICARIOUS LIABILITY

**(As to CLINIC, DESAI, HARI OM, SAI, OPERATING PHYSICIAN, CHARGE NURSE,
MALEY, KRUEGER, SUPERVISING PHARMACIST, ANESTHESIOLOGIST,
RUSHING and GCN Defendants)**

80. Plaintiff hereby adopts and incorporates by reference all prior paragraphs as though fully set forth herein.

81. Defendants' agents and/or employees were acting in the scope of their employment, under Defendants' control and direction, and in furtherance of Defendants' interests at the time their actions caused injury to Plaintiff.

82. Defendants are vicariously liable for damages resulting from its agents' and/or

1 employees' negligent actions against Plaintiff during the scope of their employment.

2 83. As a direct and proximate result of the negligence and carelessness of Defendants,
3 Plaintiff is required to undergo testing and has contracted an INFECTIOUS DISEASE.
4

5 84. As a direct and proximate result of the conduct of Defendants, Plaintiff has suffered
6 special damages in an amount in excess of Ten Thousand Dollars (\$10,000.00).

7 85. As a direct and proximate result of the conduct of Defendants, Plaintiff has suffered
8 general damages in an amount in excess of Ten Thousand Dollars (\$10,000.00).
9

10 86. As a direct and proximate result of the conduct of Defendants, Plaintiff has suffered
11 punitive damages in an amount in excess of Ten Thousand Dollars (\$10,000.00).

12 87. As a further result of Defendants' conduct, Plaintiff has had to retain the services of
13 attorneys in this matter, and therefore, seeks reimbursement of attorneys' fees and costs.
14

15 VII.

16 NEGLIGENT REFERRAL 17 (As to GASTRO Defendants)

18 88. Plaintiff hereby adopts and incorporates by reference all prior paragraphs as though
19 fully set forth herein.

20 89. As an employee, owner and/or agent of the CLINIC and/or GCN, Defendant
21 GASTRO knew or should have known of the unsafe practices of the CLINIC at the time of his
22 medical consultation and/or referral to the CLINIC.

23 90. Despite having knowledge of the unsafe practices instituted and employed at the
24 CLINIC, Defendant negligently referred Plaintiff to the CLINIC for an invasive medical procedure,
25 that exposed Plaintiff to contracting an INFECTIOUS DISEASE.
26

27 91. As a direct and proximate result of the conduct of Defendants, Plaintiff has suffered
28 special damages in an amount in excess of Ten Thousand Dollars (\$10,000.00).

93. As a direct and proximate result of the conduct of Defendants, Plaintiff has suffered punitive damages in an amount in excess of Ten Thousand Dollars (\$10,000.00).

94. As a further result of Defendants' conduct, Plaintiff has had to retain the services of attorneys in this matter, and therefore, seeks reimbursement of attorneys' fees and costs.

BREACH OF IMPLIED WARRANTY OF FITNESS FOR PARTICULAR PURPOSE
(As to BROADLANE, BEN VENUE, SICOR, BAXTER, McKESSON and SUPPLYING
PHARMACIST/PHARMACY Defendants)

95. Plaintiff hereby adopts and incorporates by reference all prior paragraphs as though fully set forth herein.

96. In March 1999, Defendant SICOR gave Defendant BAXTER the exclusive right to market propofol manufactured by Defendant SICOR in the United States. The agreement between Defendant SICOR and Defendant BAXTER extended through January 1, 2009.

97. Plaintiff is informed and believes and thereupon alleges that propofol provided by BROADLANE, BEN VENUE, SICOR, BAXTER, McKESSON and/or SUPPLYING PHARMACIST/PHARMACY was used to provide anesthetic for the operation wherein Plaintiff was infected.

98. At the time that BROADLANE, BEN VENUE, SICOR, BAXTER, McKESSON and/or SUPPLYING PHARMACIST/PHARMACY manufactured, distributed, marketed, and sold propofol to the CLINIC, Defendants BROADLANE, BEN VENUE, SICOR, BAXTER, McKESSON and/or SUPPLYING PHARMACIST/PHARMACY knew that the propofol was being used or potentially was being used in an endoscopy surgery center, and impliedly warranted that the

1 propofol was safe and fit for the purpose for which the product was ordinarily used at an endoscopy
2 surgery center, which was for anesthesia.

3
4 99. Plaintiff reasonably relied upon the skill and judgment of BROADLANE, BEN
5 VENUE, SICOR, BAXTER, McKESSON and/or SUPPLYING PHARMACIST/PHARMACY as to
6 whether the propofol sold was safe and fit for its intended use as anesthesia in an endoscopy surgery
7 center.

8
9 100. Contrary to such implied warranty, the larger propofol vials were not safe or fit for
10 their intended use as anesthesia in an endoscopy surgery center, and was and is unreasonably
11 dangerous and unfit for use as anesthesia in an endoscopy surgery center because of the foreseeable
12 misuse of treating multiple patients from the same larger propofol vial.

13
14 101. As a direct and proximate result of the conduct of Defendants BROADLANE, BEN
15 VENUE, SICOR, BAXTER, McKESSON and/or SUPPLYING PHARMACIST/PHARMACY,
16 Plaintiff has suffered special damages in an amount in excess of Ten Thousand Dollars (\$10,000.00).

17
18 102. As a direct and proximate result of the conduct of Defendants BROADLANE, BEN
19 VENUE, SICOR, BAXTER, McKESSON and/or SUPPLYING PHARMACIST/PHARMACY,
20 Plaintiff has suffered general damages in an amount in excess of Ten Thousand Dollars
21 (\$10,000.00).

22
23 103. As a direct and proximate result of the conduct of Defendants BROADLANE, BEN
24 VENUE, SICOR, BAXTER, McKESSON and/or SUPPLYING PHARMACIST/PHARMACY,
25 Plaintiff is entitled to punitive damages in an amount in excess of Ten Thousand Dollars
26 (\$10,000.00).

27
28 104. As a further result of Defendants' conduct, Plaintiff has had to retain the services of
attorneys in this matter, and therefore, seeks reimbursement of attorneys' fees and costs.

IX.

STRICT PRODUCT LIABILITY-DANGEROUSLY DEFECTIVE PRODUCT
(As to BROADLANE, BEN VENUE, SICOR, BAXTER, McKESSON and/or SUPPLYING
PHARMACIST/PHARMACY Defendants)

105. Plaintiff hereby adopts and incorporates by reference all prior paragraphs as though fully set forth herein.

106. In 1983, the Annals of Internal Medicine published an article entitled "Hepatitis B Virus Transmission Associated With A Multiple-Dose Vial In A Hemodialysis Unit" found at Ann.Intern.Med. 1983; 99; 330-3. Plaintiff is informed and believes and thereupon alleges that the potential for transmission of Hepatitis B or C or HIV from administration of medicine to two or more patients from the same vial has been known since at least 1983.

107. Propofol (i.e., "Diprivan") was initially approved for marketing on October 2, 1989 for use as an anesthetic in outpatient and inpatient procedures.

108. Plaintiff is informed and believes and thereupon alleges that, following the launch of the original formulation of propofol (i.e., "Diprivan"), that the original manufacturer (i.e., ICI Pharmaceuticals; which later became Zeneca Pharmaceuticals) and the FDA began to receive reports of infections associated with the failure of health care providers in the United States to use appropriate aseptic techniques in the administration of propofol; which reports raised concerns among Zeneca, the FDA and the Centers for Disease Control and Prevention (the "CDC") about propofol multi-dosing and its potential contaminant effect.

109. On June 29, 1990, the CDC reported in the MMWR (June 29, 1990/39(25); 426, 247, 433 that 48% to 90% of anesthesia personnel were reusing syringes to administer propofol to multiple patients:

1 Two recent surveys of anesthesia personnel show that aseptic technique and infection
2 control practices are frequently not implemented during administration of anesthesia.
3 In these surveys, from 48% to 90% of respondents reused syringes to multiple
4 patients.

5 110. Plaintiff is informed and believes and thereupon alleges that, between June 1990 and
6 February 1993, the CDC conducted investigations at seven hospitals with unusual outbreaks of
7 infections after surgical procedures using propofol and, focusing on four clusters of post operative
8 infections in four states, the CDC concluded that contamination occurring from propofol
9 administration was caused by mishandling the propofol.

10 111. On July 6, 1990, Nancy E. Nazari of Stuart Pharmaceuticals sent a "Dear Doctor"
11 letter to health care professionals regarding propofol (i.e., "Diprivan") discussing, among other
12 things, potential multiple-dose vial contamination.
13

14 112. On February 5, 1991, Nancy E. Nazari of Stuart Pharmaceuticals sent a "Dear Doctor"
15 letter to health care professionals regarding propofol (i.e., "Diprivan") discussing, among other
16 things, potential multiple-dose vial contamination.
17

18 113. On July 20, 1995, The New England Journal of Medicine published an article entitled
19 "Postoperative Infections Traced to Contamination of an Intravenous Anesthetic, Propofol" that
20 describes the above-referenced CDC investigation and, in addition, provided in pertinent part that
21 anesthesia personnel were in fact reusing multidose vials on multiple patients despite written
22 recommendations to the contrary:
23

24 Despite the written recommendations of professional associations,
25 such as the American Society of Anesthesiologists and the American
26 Association of Nurse Anesthetists, which specifically advocate the
27 use of aseptic techniques during the handling of medications, several
28 authors have reported poor compliance with aseptic techniques and
infection-control practices by anesthesia personnel. Contamination of
multidose vials, use of a single syringe to administer medication to
different patients, assembling infusion equipment far in advance of
use, and contamination of syringes and catheters have all been
implicated in other outbreaks. Studies show that reuse of multidose

1 vials can cause contamination of the medication in the vials and that
2 contamination can occur during the opening of a glass vial whose
3 surface has not been disinfected. Injecting medications into
4 intravenous catheters can cause syringes to become contaminated
5 even if the needle is changed, so that using common syringes to
6 administer medication to different patients can transmit infectious
7 agents. (Emphasis added).

8 114. On May 5, 2000, Defendant SICOR (under its then name "GensiaSicor
9 Pharmaceuticals, Inc.") filed a Suitability Petition with the FDA requesting permission to supplement
10 an abbreviated new drug application ("ANDA") for "100mg/10mL, single use vial" of propofol and
11 Defendant SICOR stated that "a smaller vial size is safer in that it may reduce the temptation for
12 dosing multiple patients from a single container thereby reducing opportunities for microbial
13 contamination." (Emphasis added).

14 115. On September 17, 2001, Defendant SICOR (under its then name "GensiaSicor
15 Pharmaceuticals, Inc.") filed a Suitability Petition with the FDA requesting permission to submit an
16 abbreviated new drug application ("ANDA") for 2000mg/200mL vials of propofol. On or about
17 December 17, 2001, the FDA rejected such petition; observing that 20 mL was the propofol "dose
18 commonly used for propofol induction of anesthesia" and the FDA stated that larger doses "could
19 make multi-dosing much more tempting and, hence, more likely."

20 116. Plaintiff is informed and believes and thereupon alleges that, in or about 2002, 12
21 patients contracted Hepatitis C at a Manhattan physician's endoscopy center caused by medication
22 drawn through multi-use vials.

23 117. Plaintiff is informed and believes and thereupon alleges that, in or about 2002, 38
24 patients contracted Hepatitis C at a Manhattan pain clinic caused by medication drawn through
25 multi-use vials.

26 118. In 2003, the World Health Organization reported that single-dose vials should
27 be used and that "the use of multi-dose vials has been reported to be a potential source of infections
28

1 in 19 studies." Bulletin of the World Health Organization 2003, 81 (7), entitled "Best infection
2 control practices for intradermal, subcutaneous, and intramuscular needle injections." One of the 19
3 studies referenced involved hepatitis caused by "preparation of multi-dose heparin", which heparin is
4 another Baxter product. (See Oren, "A common-source outbreak of fulminant Hepatitis B in a
5 hospital." Annals of Internal Medicine 1989; 110:691-8.

7 119. In June 2007, the FDA issued an alert that referenced reports of "several clusters of
8 patients who have developed fever, chills, and body aches shortly after receiving propofol from 7
9 different facilities in 4 different states and stated that the same propofol vial was used on multiple
10 patients: "To date, all affected patients received propofol for sedation in gastrointestinal suites.
11 Some facilities where the propofol was administered used propofol vials, intended only for single-
12 patient use, for more than one patient."
13

14 120. Plaintiff is informed and believes and thereupon alleges that, because of the hepatitis
15 outbreaks in New York described above, the New York State Health Commissioner; Dr. Richard
16 Daines, and the New York City Health Commissioner; Dr. Thomas Frieden, have called for an
17 outright ban on multi-dose vials.
18

19 121. Multiple use of propofol by endoscopy surgery centers on more than one patient was a
20 foreseeable misuse of propofol vials.
21

22 122. Defendants BROADLANE, BEN VENUE, SICOR, BAXTER, McKESSON and/or
23 SUPPLYING PHARMACIST/PHARMACY knew or should have known that the smaller vial sizes
24 were safer for endoscopy surgery centers given the amount of propofol typically used by such centers
25 and the economic allure to such centers to use instead of discarding remaining propofol in a larger
26 vial. As set forth above, Defendant SICOR expressly stated that "a smaller vial size is safer in that it
27 may reduce the temptation for dosing multiple patients from a single container thereby reducing
28

1 opportunities for microbial contamination." (Emphasis added).

2
3 123. Plaintiff is informed and believes and thereupon alleges that Defendants
4 BROADLANE, BEN VENUE, SICOR, BAXTER, McKESSON and/or SUPPLYING
5 PHARMACIST/PHARMACY knew of incidents prior to the shipment of the propofol used in this
6 case wherein a surgery center reportedly used propofol on more than one patient.

7 124. At the time the propofol was shipped, propofol in larger vial sizes was unreasonably
8 dangerous for use in an endoscopy surgery center, that is dangerous to any extent beyond that which
9 would be contemplated by the ordinary and prudent patient using such product, considering the
10 characteristics of the product (including, but not limited to, the much smaller propofol dosage
11 normally required for one patient undergoing colonoscopy or endoscopy surgery), its propensities,
12 risks (including not limited to the potential for transmitting infectious disease such as Hepatitis B or
13 C or HIV if propofol from the same vial was used on multiple patients), its dangers and uses.

14
15 125. Plaintiff is informed and believes and thereupon alleges that the conduct of
16 Defendants BROADLANE, BEN VENUE, SICOR, BAXTER, McKESSON and/or SUPPLYING
17 PHARMACIST/PHARMACY in manufacturing, distributing, marketing and/or selling propofol in
18 larger vials to endoscopy surgery centers was willful, reckless, malicious and in total disregard to the
19 health and safety of the patients or, alternatively, was in conscious and deliberate disregard of known
20 safety procedures, thereby justifying an award of punitive damages.

21
22 126. As a direct and proximate result of the conduct of Defendants BROADLANE,
23 BEN VENUE, SICOR, BAXTER, McKESSON and/or SUPPLYING
24 PHARMACIST/PHARMACY, Plaintiff has suffered special damages in an amount in excess of Ten
25 Thousand Dollars (\$10,000.00).
26
27
28

127. As a direct and proximate result of the conduct of Defendants BROADLANE, BEN VENUE, SICOR, BAXTER, McKESSON and/or SUPPLYING PHARMACIST/PHARMACY, Plaintiff has suffered general damages in an amount in excess of Ten Thousand Dollars (\$10,000.00).

128. As a direct and proximate result of the conduct of Defendants BROADLANE, BEN VENUE, SICOR, BAXTER, McKESSON and/or SUPPLYING PHARMACIST/PHARMACY, Plaintiff is entitled to punitive damages in an amount in excess of Ten Thousand Dollars (\$10,000.00).

129. As a further result of Defendants' conduct, Plaintiff has had to retain the services of attorneys in this matter, and therefore, seeks reimbursement of attorneys' fees and costs.

X.

NEGLIGENCE

(As to INSPECTION ENTITY Defendant)

130. Plaintiff hereby adopts and incorporates by reference all prior paragraphs as though fully set forth herein.

131. Defendant QUALITY CARE CONSULTANTS is a Nevada LLC and Dr. Ikramullah Khan and Dr. Javaid Anwar are the "Managers" of Quality Care Consultants.

132. Plaintiff is informed and believes and thereupon alleges that Dr. Ikramullah Khan and Dr. Javaid Anwar have been doing business in the State of Nevada under the name "Quality Care Consultants" since 2004 but are presently not aware of the exact type of business entity, if any, conducting such business prior to the formation of the Nevada LLC named as a Defendant herein ("Quality Care Consultants"). Plaintiff reserves the right to amend the complaint to add any additional entities owned by Dr. Ikramullah Khan and Dr. Javaid Anwar that did business under the name of Quality Care Consultants with the CLINIC in this case. The Nevada LLC named as a

1 Defendant herein ("Quality Care Consultants") and any and all entities owned by Dr. Ikramullah
2 Khan and Dr. Javaid Anwar that did business under the name of Quality Care Consultants with the
3 CLINIC shall hereinafter be referred to as "QCC."
4

5 133. Plaintiff is informed and believes that, from approximately March 2004 to the present
6 time, Dr. Ikramullah Khan was the Vice President of Health Care Services for the MGM MIRAGE
7 Corporation.
8

9 134. Plaintiff is informed and believes that, from 2004 through at least 2006, Dr.
10 Ikramullah Khan was a member of the Physicians Advisory Council for Quality Improvement and
11 Utilization Management for Blue Cross and Blue Shield of Colorado.
12

13 135. Plaintiff is informed and believes that, given his position with the MGM MIRAGE
14 Corporation, Dr. Ikramullah Khan was in a position to influence decisions regarding what doctors
15 and health care providers would be added to its preferred list of doctors and health care providers,
16 including but not limited to, being in a position to influence decisions regarding whether or not the
17 CLINIC was added to such preferred list.
18

19 136. Plaintiff is informed and believes that, during the time period that Plaintiff had
20 surgery at the CLINIC, Dr. Javaid Anwar was a member of the Nevada State Board of Medical
21 Examiners and that, given his role as one of the ultimate decision makers in regulatory matters
22 concerning doctors and health care providers, Dr. Anwar was in a position of influence regarding
23 doctors and health care providers.
24

25 137. Plaintiff is informed and believes that QCC, through Dr. Ikramullah Khan or Dr.
26 Javaid Anwar, sent letters to numerous doctors and health care providers soliciting employment to
27 "review and assess the current medical facilities, programs, policies and procedures" and that "[t]his
28 would include onsite review of all facilities in Las Vegas and meetings with physicians and

1 managerial staff at each location." The letters further stated that "[o]n its completion, we will make
2 recommendations for institution of policies and procedures for delivery of quality care in accordance
3 with national standards." The "Global Fee" charged by QCC for the foregoing services was Twenty-
4 Five Thousand Dollars (\$25,000.00). In addition, QCC also proposed to provide "ongoing
5 monitoring services on a monthly basis" after providing the initial report of its onsite review and
6 "recommendations for institution of policies and procedures"

8 138. Plaintiff is informed and believes that the CLINIC hired QCC to perform the above-
9 referenced onsite review and "make recommendations for institution of policies and procedures for
10 delivery of quality care in accordance with national standards" and that, in performing such
11 activities, QCC was negligent in failing to detect the dangerous procedures that the CLINIC was
12 using regarding the administration of anesthesia (including, but not limited to, inappropriate aseptic
13 techniques) and/or QCC was negligent in making appropriate recommendations to stop such
14 dangerous procedures.
15

16 139. Plaintiff is informed and believes and thereupon alleges that the conduct of QCC in
17 conducting an on-site review and making "recommendations for institution of policies and
18 procedures for delivery of quality care in accordance with national standards" was willful, reckless,
19 malicious and in total disregard to the health and safety of patients or, alternatively, was in conscious
20 and deliberate disregard of known safety procedures (including, but not limited to, being in
21 conscious and deliberate disregard of known safety procedures or standards for quality improvement
22 inspections) thereby justifying an award of punitive damages.
23

24 140. As a direct and proximate result of the conduct of QCC, Plaintiff has suffered special
25 damages in an amount in excess of Ten Thousand Dollars (\$10,000.00).
26

27 141. As a direct and proximate result of the conduct of QCC, Plaintiff has suffered general
28

1 damages in an amount in excess of Ten Thousand Dollars (\$10,000.00).

2 142. As a direct and proximate result of the conduct of QCC, Plaintiff is entitled to
3
4 punitive damages in an amount in excess of Ten Thousand Dollars (\$10,000.00).

5 143. As a further result of Defendants' conduct, Plaintiff has had to retain the services of
6 attorneys in this matter, and therefore seeks reimbursement of attorneys' fees and costs.

7 XI.

8 NEGLIGENT UNDERTAKING 9 (As to INSPECTION ENTITY Defendant)

10 144. Plaintiff hereby adopts and incorporates by reference all prior paragraphs as though
11 fully set forth herein.

12 145. Plaintiff is informed and believes that QCC undertook on-site review and issued
13 "recommendations for institution of policies and procedures for delivery of quality care in
14 accordance with national standards" for the CLINIC for the direct or indirect benefit of patients and
15 that, in performing such activities, QCC was negligent in failing to detect the dangerous procedures
16 that the CLINIC was using regarding the administration of anesthesia (including, but not limited to,
17 inappropriate aseptic techniques) and/or QCC was negligent in failing to make appropriate
18 recommendations to stop such dangerous procedures.

19 146. Plaintiff is informed and believes and thereupon alleges that the conduct of QCC in
20 conducting an on-site review and making "recommendations for institution of policies and
21 procedures for delivery of quality care in accordance with national standards" was willful, reckless,
22 malicious and in total disregard to the health and safety of patients or, alternatively, was in conscious
23 and deliberate disregard of known safety procedures (including, but not limited to, being in
24 conscious and deliberate disregard of known safety procedures or standards for quality improvement
25 inspections) thereby justifying an award of punitive damages.

1 147. As a direct and proximate result of the conduct of QCC, Plaintiff has suffered special
2 damages in an amount in excess of Ten Thousand Dollars (\$10,000.00).

3
4 148. As a direct and proximate result of the conduct of QCC, Plaintiff has suffered general
5 damages in an amount in excess of Ten Thousand Dollars (\$10,000.00).

6 149. As a direct and proximate result of the conduct of QCC, Plaintiff is entitled to
7 punitive damages in an amount in excess of Ten Thousand Dollars (\$10,000.00).

8 150. As a further result of Defendants' conduct, Plaintiff has had to retain the services of
9 attorneys in this matter, and therefore, seeks reimbursement of attorneys' fees and costs.
10

11 XII.

12 LOSS OF CONSORTIUM 13 (As to all Defendants)

14 151. Plaintiff hereby adopts and incorporates by reference all prior paragraphs as though
15 fully set forth herein.

16 152. That Plaintiff LOVEY MARTIN is the spouse of Plaintiff GWENDOLYN MARTIN,
17 and has been her spouse at all times relevant to this Complaint.
18

19 153. As a direct and proximate result of each of the Defendants' negligence, LOVEY
20 MARTIN has suffered loss of consortium and consequent severe emotional distress all to Plaintiff's
21 damage in excess of Ten Thousand Dollars (\$10,000.00).

22 154. As a further direct and proximate result of Defendants' negligence Plaintiff, LOVEY
23 MARTIN has had to retain the services of attorneys and therefore seeks reimbursement of attorneys'
24 fees and costs.
25

26 ///

27 ///

28 ///

XIII.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for Judgment against Defendants, and each of them, as follows:

1. For general damages in excess of \$10,000.00;
2. For special damages in excess of \$10,000.00;
3. For punitive damages in an amount to be determined at trial;
4. For reasonable attorneys' fees;
5. For costs of suit; and
6. For any such further relief this Court deems appropriate.

XIV.

DEMAND FOR JURY TRIAL

Plaintiffs herein demand a trial by jury on all issues so triable.

DATED this 18th day of March, 2009.

GILLOCK, MARKLEY & KILLEBREW, P.C.

By: Nia Killebrew

NIA C. KILLEBREW, ESQ.

Nevada Bar No.: 004553

GERALD I. GILLOCK, ESQ.

Nevada Bar No.: 00051

GILLOCK, MARKLEY & KILLEBREW, P.C.

428 So. 4th Street

Las Vegas, NV 89101

(702) 385-1482

Attorneys for Gwendolyn Martin and Lovey Martin

EXHIBIT 1

AFFIDAVIT OF
THOMAS B. HARGRAVE, M.D.

STATE OF CALIFORNIA)
) ss:
 COUNTY OF ALAMEDA)

I, Thomas B. Hargrave, M.D., am a physician duly licensed to practice medicine in the State of California since 1981. Attached hereto as exhibit A1" is a true and correct copy of my curriculum vitae setting forth my education, training and experience as a board certified gastroenterologist.

I am familiar with the standards of care for a gastroenterologist practicing at all times relevant to the care provided herein, including, but not limited to, the time periods from March 2004 through and including January of 2008. I am also familiar with the standards of care for the management and handling of medical devices and medications in connection with the provision of medical care for patients undergoing gastroenterology endoscopic procedures at all relevant times referenced herein.

I have had an opportunity to review relevant portions of the medical records of Gwendolyn Martin from the Endoscopy Center of Southern Nevada on Shadow Lane, which include the operative reports and anesthesia records relating to Ms. Martins's colonoscopy on September 20, 2007 and esophagogastroduodenoscopy on September 21, 2007 performed at that facility. I have also reviewed copies of her blood test results confirming her diagnosis of acute Hepatitis C, genotype 1a, in November 2007, together with bulletins from the Southern Nevada Health District and Centers for Disease Control and Prevention relating to its inspections and

findings of the facility in question.

The standards of care in connection with the provision of medical care and treatment and the management and handling of medical devices and medications mandates that strict sterile technique be implemented and followed for all patients receiving intravenous anesthetic medications. This includes, but is not limited to, utilizing aseptic technique by all health care providers while providing all types of invasive medical care and properly using medical devices and medications.

Failure of a gastroenterologist and/or any other health care provider(s) who may have provided medical care, and/or who oversaw, implemented, approved or failed to take action in response to the practices referenced respecting non-sterile anesthesia-related practices and/or inappropriate uses of medication(s) and/or medical devices, falls below the standard of care.

These violations of the standard of care caused and/or substantially contributed to the patient's contraction of Hepatitis C and possible exposure to other blood borne pathogens as reported and reviewed by the governmental entities, including the Southern Nevada Health District and Centers for Disease Control and Prevention.

All opinions set forth herein are stated to a reasonable degree of medical probability. I reserve the right to alter, modify and/or change the opinions expressed herein based upon receipt and review of additional information that may become available.

FURTHER AFFIANT SAYETH NAUGHT.


THOMAS B. HARGRAVE, M.D.

CALIFORNIA JURAT WITH AFFIANT STATEMENT

~~NOTARY PUBLIC STATE OF CALIFORNIA - COMMISSION EXPIRES JULY 6, 2011~~

☐ See Attached Document (Notary to cross out lines 1-6 below)

☐ See Statement Below (Lines 1-6 to be completed only by document signer[s], not Notary)

Signature of Document Signer No. 1

Signature of Document Signer No. 2 (if any)

State of California

County of Alameda

Subscribed and sworn to (or affirmed) before me on this

5th day of May, 2010, by

(1) Harold B. R. [Signature]
Name of Signer

proved to me on the basis of satisfactory evidence
to be the person who appeared before me. () ()

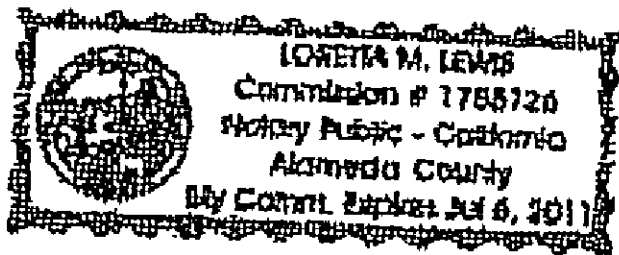
(and

(2) _____
Name of Signer

proved to me on the basis of satisfactory evidence
to be the person who appeared before me.)

Signature [Signature]
Signature of Notary Public

Print Notary Seal Below



OPTIONAL

Although the information below is not required by law, it may prove
valuable to persons relying on the documents and could prevent
fraudulent removal and replacement of this form to another document.

Further Description of Any Attached Document

Title or Type of Document: Affidavit

Document Date: 5/5/10

Number of Pages: 2

Signer(s) Other Than Document Above: [Signature]

RIGHT TO REPORT
TOP OF FIRST PAGE

RIGHT TO REPORT
TOP OF SECOND PAGE

MedCURRICULUM VITAE

THOMAS B. HARGRAVE III, M.D.

Address: East Bay Center for Digestive Health
3300 Webster St., Suite 312
Oakland, Calif. 94609 (510) 444-3297 Fax: (510) 444-6421

Date of Birth: 10/21/52

Academic Training:

Premedical: Yale University 1971-1975; B.S. Degree Biology
Medical: UCLA School of Medicine 1975-1979; M.D.,
Internship: UC San Francisco; Internal Medicine; 1979-1980
Residency: UC San Francisco; Internal Medicine 1980-1982
Fellowship: UC San Francisco; Gastroenterology; 1983-1985

Licensure:

California: # 006445060
DEA Registration Through 2008
Certified: Am. Board Internal Medicine; September 15, 1982
Certified: Am. Board Int. Med., Gastroenterology; November 19, 1985

Teaching Activities:

Assistant Clinical Professor of Medicine, UCSF Dept. Med., 1987-
Clinical Instructor UCSF-Berkeley Joint Medical Program, 1985-2007

Awards:

Yale University:

Phi Beta Kappa 1974, 1975
Summa Cum Laude 1975
Distinction in the Major 1975
Edgar J. Boell Prize for Excellence in Biology 1975
Branford College Fellows Award (Highest Graduating GPA) 1975

UCLA Medical School:

Class President 1976-1978
Metro Goldwyn Mayer Scholarship 1975-1979
Franklin C. McClellan Award: Academic Achievement 1979
UCLA Alumni Award: Medicine Dept. Academic Achievement 1979
UCLA Longmire Medal: Surgical Dept. Academic Achievement 1979
Alpha Omega Alpha Honor Medical Society 1978, 1979; Chapter President 1979

CURRICULUM VITAE

THOMAS B. HARGRAVE III, M.D.

Medical Societies:

American Gastroenterological Association (AGA)
American Society of Gastrointestinal Endoscopy (ASGE)
California Medical Association (CMA)
Alameda Contra Costa Medical Society (ACCMSA)
Northern California Society for Clinical Gastroenterology

Hospital Affiliations:

Summit Medical Center, Oakland, Ca.: Active
Alta Bates Hospital, Berkeley, Ca.: Active
Merrithew Memorial Hospital, Martinez, Ca.: Provisional
Children's Hospital Oakland: Provisional Courtesy (Pediatric Biliary Procedures)
University of California, San Francisco: Teaching Associate

Misc:

Chief of Gastroenterology, Summit Medical Center, 1992-1998
Chief of Gastroenterology, Hill Physicians Medical Group, 1994-2005
Member Board of Directors, Summit Medical Center, 1992-1994
Summit Medical Center Quality Assurance Committee, 1992-1998
Summit Medical Center Utilization Review Committee, 1992-1998
Summit Medical Center Pharmacy and Therapeutics Committee 1994-2001
Alameda Contra Costa Medical Society Liability Committee B, 1994-2000

EXHIBIT 2

procedures.

The records reflect that Gwendolyn Martin was seen in consultation by Lisa Franks PA-C/Clifford Carrol, M.D. on September 11, 2007, at the Gastroenterology Center of Nevada. The patient was referred by Lisa Franks PA-C/Clifford Carrol, M.D. to the Endoscopy Center of Southern Nevada for a colonoscopy, which was performed on September 20, 2007, and a gastroscopy, which was performed on September 21, 2007.

As referenced in my prior affidavit, I have had an opportunity to review the medical records of Gwendolyn Martin from the Endoscopy Center of Southern Nevada and Gastroenterology Center of Nevada, together with other items referenced in my first affidavit, including the deficiency reports and plans of correction issued by the State of Nevada Health Division Bureau of Licensure and Certification.

It is my opinion, to a reasonable degree of medical probability, that Lisa Franks PA-C/Clifford Carrol, M.D. who were employed by or associated with the Gastroenterology Center of Nevada, and referred a patient for a procedure at the Endoscopy Center of Southern Nevada, knew or should have been familiar with the practices of that facility and had a duty to ensure that the proper standards of care and policies and protocols were followed at that facility. These duties include, but are not limited to, ensuring proper management and handling of medical devices and medications in connection with the provision of medical care for patients undergoing endoscopic procedures at such a facility were followed and met. Alternatively, the referral to that facility should not have been made.

It is my opinion that the care and treatment rendered to Gwendolyn Martin at the Endoscopy Center of Southern Nevada fell below the standard of care and caused the

patient to contract Hepatitis C. It is further my opinion that Lisa Franks PA-C/Clifford Carrol, M.D. fell below the standard of care by referring this patient to the Endoscopy Center of Southern Nevada for an endoscopic procedure(s) as they knew or should have known of the deficient practices and violations of standard aseptic techniques practiced at that facility from 2004 through 2008. It is also my opinion, to a reasonable degree of medical probability that the aforementioned breaches in the standards of care, including the patient=s referral to the Endoscopy Center of Southern Nevada, caused and/or substantially contributed to the patient=s contraction of Hepatitis C.

All opinions set forth herein are stated to a reasonable degree of medical probability. I reserve the right to alter, modify and/or change the opinions expressed herein based upon receipt and review of additional information that may become available.

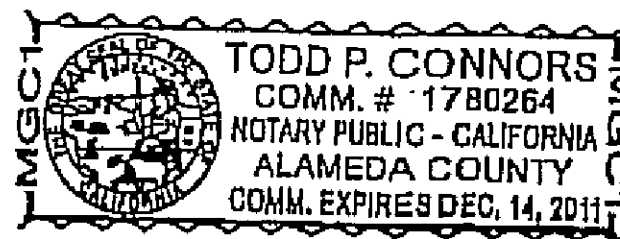
FURTHER, YOUR AFFIANT SAYETH NAUGHT.


THOMAS B. HARGRAVE, M.D.

SUBSCRIBED and SWORN to before me

on this 17th day of February 2009.


NOTARY PUBLIC in and for said
COUNTY and STATE



MedCURRICULUM VITAE

THOMAS B. HARGRAVE III, M.D.

Address: East Bay Center for Digestive Health
3300 Webster St., Suite 312
Oakland, Calif. 94609 (510) 444-3297 Fax: (510) 444-6421

Date of Birth: 10/21/52

Academic Training:

Premedical: Yale University 1971-1975; B.S. Degree Biology
Medical: UCLA School of Medicine 1975-1979; M.D..
Internship: UC San Francisco; Internal Medicine; 1979-1980
Residency: UC San Francisco; Internal Medicine 1980-1982
Fellowship: UC San Francisco; Gastroenterology; 1983-1985

Licensure:

California: # 00G445060

DEA Registration Through 2008

Certified: Am. Board Internal Medicine; September 15, 1982

Certified: Am. Board Int. Med., Gastroenterology; November 19, 1985

Teaching Activities:

Assistant Clinical Professor of Medicine, UCSF Dept. Med., 1987-
Clinical Instructor UCSF-Berkeley Joint Medical Program, 1985-2007

Awards:

Yale University:

Phi Beta Kappa 1974, 1975

Summa Cum Laude 1975

Distinction in the Major 1975

Edgar J. Boell Prize for Excellence in Biology 1975

Branford College Fellows Award (Highest Graduating GPA) 1975

UCLA Medical School:

Class President 1976-1978

Metro Goldwyn Mayer Scholarship 1975-1979

Franklin C. McClean Award: Academic Achievement 1979

UCLA Alumni Award: Medicine Dept. Academic Achievement 1979

UCLA Longmire Medal: Surgical Dept. Academic Achievement 1979

Alpha Omega Alpha Honor Medical Society 1978, 1979; Chapter President 1979

CURRICULUM VITAE

THOMAS B. HARGRAVE III, M.D.

Medical Societies:

American Gastroenterological Association (AGA)
American Society of Gastrointestinal Endoscopy (ASGE)
California Medical Association (CMA)
Alameda Contra Costa Medical Society (ACCMA)
Northern California Society for Clinical Gastroenterology

Hospital Affiliations:

Summit Medical Center, Oakland, Ca.: Active
Alta Bates Hospital, Berkeley, Ca.: Active
Merrithew Memorial Hospital, Martinez, Ca.: Provisional
Children's Hospital Oakland: Provisional Courtesy (Pediatric Biliary Procedures)
University of California, San Francisco: Teaching Associate

Misc:

Chief of Gastroenterology, Summit Medical Center, 1992-1998
Chief of Gastroenterology, Hill Physicians Medical Group, 1994-2005
Member Board of Directors, Summit Medical Center, 1992-1994
Summit Medical Center Quality Assurance Committee, 1992-1998
Summit Medical Center Utilization Review Committee, 1992-1998
Summit Medical Center Pharmacy and Therapeutics Committee 1994-2001
Alameda Contra Costa Medical Society Liability Committee B, 1994-2000

EXHIBIT 3

AFFIDAVIT OF
RICHARD SINGER, M.D.

STATE OF NEVADA)
)SS:
 COUNTY OF CLARK)

RICHARD A. SINGER, M.D., being first duly sworn under oath, deposes and says:

I am a medical doctor licensed to practice in the State of Nevada and have practiced in the area of anesthesia for nearly forty (40) years. Attached hereto is a true and correct copy of my curriculum vitae setting forth my education, training and experience as a physician.

I am familiar with the standards of care for certified registered nurse anesthetists and anesthesiologists practicing at all times relevant to the care provided herein, including, but not limited to, the time periods from March 2004 through and including January of 2008. I am also familiar with the standards of care for the management and handling of medical devices and medications in connection with the provision of anesthetic care for patients undergoing gastroenterology endoscopic procedures and as a supervisor of those providing anesthesia services to patients at all relevant times referenced herein.

I have had an opportunity to review portions of the medical records of Gwendolyn Martin from the Endoscopy Center of Southern Nevada on Shadow Lane relating to Ms. Martin's colonoscopy of September 20, 2007 and esophagogastroduodenoscopy (EGD) of September 21, 2007 performed at that facility. I have also reviewed copies of her blood test results confirming her Hepatitis C virus infection, together with bulletins and deficiency reports from the Southern Nevada Health District, Centers for Disease Control and Prevention and the State of Nevada Department of Business and Licensure relating to its inspections and findings of the facility in question. I have also reviewed the Physician Supervising Agreements between the Gastroenterology Center of Nevada and Thomas Yee, M.D. dba Professional Anesthesia Consultants dated April 1, 2002 and between the Gastroenterology Center of Nevada and Satish Sharma, M.D., dated August 16, 2007.

The standards of care in connection with the provision of anesthesia services and the

1 management and handling of medical devices and medications mandates that strict sterile
2 technique be implemented and followed for all patients receiving intravenous anesthetic
3 medications. This includes, but is not limited to, utilizing aseptic technique by all health care
4 providers while providing all types of invasive medical care and properly using medical devices
5 and medications. It is the responsibility of the supervising physicians, including the supervising
6 anesthesiologist, to ensure strict aseptic techniques are followed by the CRNA and/or staff
7 assisting the CRNA in performing such services to the patient.

8 Failure of a certified registered nurse anesthetist and/or any other health care provider(s)
9 who may have provided anesthesia services, and/or who oversaw, implemented, approved or
10 failed to take action in response to the practices referenced respecting non-sterile anesthesia-
11 related practices and/or inappropriate uses of medication(s) and/or medical devices, falls below
12 the standard of care.

13 These violations of the standard of care, including the failure of Thomas Yee, M.D.,
14 Satish Sharma, M.D. and any other supervising anesthesiologist to properly monitor and
15 supervise the administration of anesthesia by a CRNA caused and/or substantially contributed to
16 Ms. Martin's contraction of Hepatitis C and possible exposure to other blood borne pathogens as
17 reported and reviewed by the governmental entities, including the Southern Nevada Health
18 District, Centers for Disease Control and Prevention and the State of Nevada Health Division
19 Bureau of Licensure and Certification.

20 It is my opinion to a reasonable degree of medical probability based upon my education,
21 training, experience, and review of previously described materials, that the defendants' conduct
22 in treating Ms. Martin and/or their failure to adequately supervise and/or ensure proper policies,
23 protocols, procedures and practices were in place and followed with respect to the administration
24 of anesthesia, fell below the standard of care and caused and/or substantially contributed to
25 causing this patient's contraction of Hepatitis C.

26 ///

27 ///

28 ///

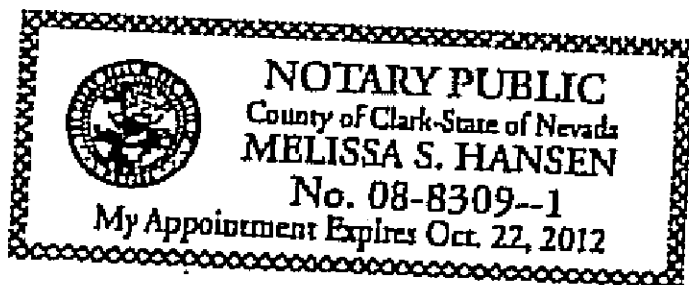
1 All opinions set forth herein are stated to a reasonable degree of medical probability. I
2 reserve the right to alter, modify and/or change the opinions expressed herein based upon receipt
3 and review of additional information that may become available.

4 FURTHER AFFIANT SAYETH NAUGHT.

5
6
7 
8 RICHARD A. SINGER, M.D.

9 SUBSCRIBED and SWORN to before me
10 on this 20th day of February, 2009.

11 
12 NOTARY PUBLIC in and for said
13 COUNTY and STATE



Curriculum Vitae
Richard A. Singer, M.D.
3970 S McLeod Dr,
Las Vegas, Nevada 89052

Personal

Date of Birth	December 1, 1939
Social Security	[REDACTED]
Place of Birth	Jersey City, NJ

Office Address

2635 Box Canyon Dr.
Las Vegas, NV 89121

Licensure

Nevada #2612

DEA

#AS5441605

State Pharmacy

#CS01034

Undergraduate Degree
(1961)

Bachelor Science Major: Premedical
Washington & Jefferson College
Washington, Pennsylvania

Medical Degree
(1965)

New Jersey College of Medicine and Dentistry
Newark, NJ

Internship
07/01/65-06/30/66

Beth Israel Medical Center
New York NY

Residency
07/01/66-06/30/67

Beth Israel Medical Center
New York, NY

07/01/67-01/01/69 Obstetrical & Gynecology 1st , 2nd & 3rd Years
St Josephs Hospital, Phoenix Arizona

01/01/69-12/31/70
Maricopa County Hospital, Phoenix Arizona
Anesthesiology

Military Service

(1970-1971)

(1971-1972)

Fitzsimmons General Hospital, Denver, Colorado
Walson Army Hospital, Ft.Dix, New Jersey
Chief Anesthesiology

Activity Since Military

(1972-Present)

Private Practice of Anesthesiology
Las Vegas, Nevada

EXHIBIT 4

AFFIDAVIT OF
GEORGE H. COX, BSN, MHS, CRNA

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, George H. Cox, am a certified registered nurse anesthetist and have practiced in the area of anesthesia nursing for over twenty (20) years. Attached hereto as exhibit "1" is a true and correct copy of my curriculum vitae setting forth my education, training and experience as a nurse anesthetist.

I am familiar with the standards of care for certified registered nurse anesthetists practicing at all times relevant to the care provided herein, including, but not limited to, the time periods from March 2004 through and including January of 2008. I am also familiar with the standards of care for the management and handling of medical devices and medications in connection with the provision of anesthetic care for patients undergoing gastroenterology endoscopic procedures at all relevant times referenced herein.

I have had an opportunity to review portions of the medical records of Gwendolyn Martin from the Endoscopy Center of Southern Nevada on Shadow Lane relating to Ms. Martin's colonoscopy of September 20, 2007 and EGD (esophagogastroduodenoscopy) of September 21, 2007 performed at that facility. I have also reviewed copies of her blood test results confirming her diagnosis of acute Hepatitis C, genotype 1a, together with bulletins from the Southern Nevada Health District and Centers for Disease Control and Prevention relating to its inspections and findings of the facility in question.

The standards of care in connection with the provision of anesthesia services and the management and handling of medical devices and medications mandates that strict sterile technique be implemented and followed for all patients receiving intravenous anesthetic medications. This includes, but is not limited to, utilizing aseptic technique by all health care providers while providing all types of invasive medical care and properly using medical devices and medications.

Failure of a certified registered nurse anesthetist and/or any other health care provider(s) who may have provided anesthesia services, and/or who oversaw, implemented, approved or failed to take action in response to the practices referenced respecting non-sterile anesthesia-related practices and/or inappropriate uses of medication(s) and/or medical devices, falls below the standard of care.

These violations of the standard of care caused and/or substantially contributed to the patient's contraction of Hepatitis C and possible exposure to other blood borne pathogens as reported and reviewed by the governmental entities, including the Southern Nevada Health District and Centers for Disease Control and Prevention.

All opinions set forth herein are stated to a reasonable degree of nursing probability. I reserve the right to alter, modify and/or change the opinions expressed herein based upon receipt and review of additional information that may become available.

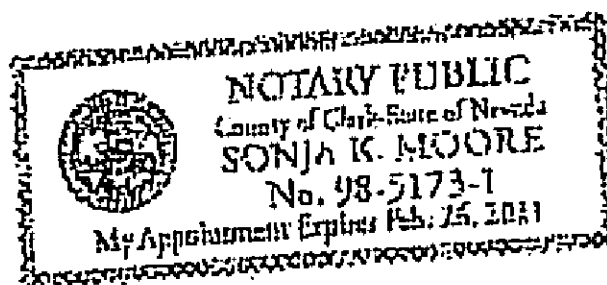
FURTHER AFFIANT SAYETH NAUGHT.


GEORGE H. COX, BSN, MHS, CRNA

SUBSCRIBED and SWORN to before me

on this 20th day of April, 2008.


NOTARY PUBLIC in and for said
COUNTY and STATE



CURRICULUM VITAE

NAME: GEORGE H COX

BUSINESS ADDRESS: 8846 Zurich Court
Las Vegas, Nevada 89147-8100

E - MAIL ADDRESS: GHCAPNC@AOL.COM

BUSINESS: 702-280-7699

HOME: 702-227-3072

TELEFAX: 702-227-3071

LICENSURE: Nevada Registered Nurse 2001 - EXP. 01/09
Nevada Certified Registered Nurse Anesthetist 2001 - EXP. 01/09
American Association of Nurse Anesthetists 1989 - EXP. 07/09
California Registered Nurse 1982 - Inactive
Kansas Registered Nurse 1993 - Inactive
Kansas Advanced Practice Nurse 1993 - Inactive
Kansas Certified Registered Nurse Anesthetist 1993 - Inactive
Arkansas Registered Nurse 1998 - Inactive
Arkansas Advanced Practice Nurse 1998 - Inactive
Missouri Registered Nurse 2001 - Inactive

ADVANCED LIFE SUPPORT CERTIFICATES: Basic Cardiac Life Support (BCLS-Current)
Advanced Cardiac Life Support (ACLS-Current)
Pediatric Advanced Life Support (PALS)
Neonatal Advanced Life Support (NALS)
Advanced Trauma Life Support (ATLS)

CERTIFICATIONS: American Association of Critical Care Nurses
Certified Critical Care Nurse (CCRN) - 1984

Emergency Department Nurses' Association
Certified Emergency Nurse (CEN) - 1984

American Association of Nurse Anesthetists
Certified Registered Nurse Anesthetist (CRNA) - 1988

National Alliance of Certified Legal Nurse Consultants
Certified Legal Nurse Consultant (CLNC) - 2004

United States of America
Department of Transportation
Federal Aviation Administration
Certificated Flight Instructor (CFI) - 1998

AREAS OF SPECIALIZATION: Certified Registered Nurse Anesthetist
 Advanced Registered Nurse Practitioner
 Legal Nurse Consultant (Pre-Litigation and Litigation Support)
 Executive Nurse Administration (Outpatient Surgery)
 Nursing Education (Anesthesiology Nursing & Life Support)
 Critical Care Nursing (Coronary Care and Trauma)
 Emergency Nursing

EDUCATION:

CIVILIAN: Hendrick Memorial Hospital
 School of Vocational Nursing
 Abilene, Texas 79601
 1977 - Diploma

California State University, Fresno
 College of Nursing
 Fresno, California 93740
 Bachelor of Science in Nursing
Magna Cum Laude - 1983

Texas Wesleyan University
 Fort Worth, Texas 76105
 Master of Health Science in Nurse Anesthesiology
Distinguished Honor Graduate - 1987

MILITARY: AMEDD Officer Basic Course
 Academy of Health Sciences, US Army
 Fort Sam Houston, Texas - 1984

AMEDD Officer Advanced Course
 Academy of Health Sciences, US Army
 Fort Sam Houston, Texas - 1986

Anesthesiology for ANC Officers (6F-66F)
 Academy of Health Sciences, US Army
 Fort Sam Houston, Texas 78234
 William Beaumont Army Medical Center
 El Paso, Texas - 1988

US Army Combined Arms and Services Staff School
 US Army Command and General Staff College
 Fort Leavenworth, Kansas - 1990

Medical Management of Chemical Casualties Course (M2C3)
 US Army Medical Research Institute of Chemical Defense
 Tripler Army Medical Center
 Honolulu, Hawaii - 1991

Medical Effects of Nuclear Weapons
 Armed Forces Radiobiology Research Institute
 Tripler Army Medical Center
 Honolulu, Hawaii - 1991

PROFESSIONAL EXPERIENCE: *Green Valley Anesthesia Services, LLC*

P. O. Box 400325

Las Vegas, Nevada 89140-0325

Senior and Managing Partner - June 2005 - Present

Southern Nevada Professional Legal Nurse Consultants, LLC

8845 Zurich Court

Las Vegas, Nevada 89147-0100

President, Consultant - April 2004 - Present

Las Vegas Regional Surgery Center, LP

3560 East Flamingo Road, Suite 105

Las Vegas, Nevada 89121-5000

Executive Nurse Administrator (Temporary Position)

90 Day Position - Employed to Set-Up and Open Facility

01 May 2007 - 30 July 2007

Endoscopic Institute of Nevada

3777 Pecos McLeod, Suite 102

Las Vegas, Nevada 89121

Director of Nursing, Medical Records and On-Site Pharmacy

(21 January 2002 - 17 August 2004)

Chief Nurse Anesthetist (21 January 2002 - 07 June 2005)

Medical Doctor Associates, Inc

145 Technology Parkway, NW

Norcross, Georgia 30092

03 January 2000 - 05 December 2001

*Providing services for the following clients,**Amarillo VA Medical Center*

6010 Amarillo Blvd., West

Amarillo, Texas 79106

30 August 2000 - 05 December 2001

Overton Brooks VA Medical Center

510 East Stoner Avenue

Shreveport, Louisiana 71101-4295

03 January 2000 - 24 August 2000

*Independent Contractor**Medical Park Hospital*

2001 Main Street

Hope, AR 71801

28 December 1998 - 31 December 1999

United Anesthesia Associates, Incorporated

P.O. Box 1847

Kernersville, North Carolina 27285

23 March 1997 - 17 November 1998

*Providing services for the following clients**Wichita Anesthesiology, Charlerod*

Saint Francis Medical Center

Columbia Wesley Medical Center

Wichita, Kansas 67218

Mid - Continent Anesthesiology
Southwest Medical Center
Liberal, Kansas 67901

Saint Francis Hospital and Medical Center
1700 West Seventh Street
Topeka, Kansas 66606

Central Kansas Medical Center
3515 Broadway Street
Great Bend, Kansas 67530

Obstetric Anesthesia / Analgesia Service
Anesthesia Nursing Section
Irwin Army Community Hospital
Fort Riley, Kansas 66442-5037
01 January 1994 - 28 February 1997

Independent Private Practice
Anesthesia and Acute Pain Management
Manhattan, Kansas 66502-2840
10 July 1993 - 31 December 1996

Staff Nurse Anesthetist
Anesthesia Nursing Section
Irwin Army Community Hospital
Fort Riley, Kansas 66442-5037
11 September 1992 - 10 September 1993

Staff Nurse Anesthetist
Adjunct Clinical Faculty, *US Army/Texas*
Wesleyan University Program in
Anesthesia Nursing
Tripler AMC, Hawaii 96859-5000
20 December 1990 - 27 July 1992

Staff Nurse Anesthetist
Joint US Task Force Medical Element
Joint Task Force - Bravo
Solo Cano Air Base, Honduras
APO Miami, FL 34042
25 June 1990 - 19 December 1990

Staff Nurse Anesthetist
Adjunct Clinical Faculty, *US Army/Texas*
Wesleyan University Program in
Anesthesia Nursing
Anesthesia Nursing Section
Tripler AMC, Hawaii 96859-5000
06 January 1989 - 24 June 1990

Clinical Staff Nurse
Critical Care Nursing Section
William Beaumont Army Medical Center
El Paso, Texas 79920-5000
March 1984 - September 1986

Clinical Staff Nurse III
Critical Care Nursing Section
Madera Community Hospital
Madera, California 93639
January 1981 - January 1984

OTHER WORK EXPERIENCE: Self-Employed - Cox Flight Services
Certificated Flight Instructor
Primary and Advanced Flight Instruction
Instrument and Commercial Pilot Ratings
Hope, Arkansas 71802
Manhattan, Kansas 66503
December 1998 - July 2001

TEACHING EXPERIENCE: Advanced Cardiac Life Support Instructor
American Heart Association
California, Texas, Hawaii, Kansas and Nevada Affiliates
June 1983 - November 2003

Adjunct Clinical Faculty, US Army / Texas
Wesleyan University Program in
Anesthesia Nursing
Anesthesia Nursing Section
Tripler AMC, Honolulu, Hawaii 96859-5000
06 January 1989 - 27 July 1992

Certificated Flight Instructor
Primary and Advanced Flight Instruction
Instrument and Commercial Pilot Ratings
Hope, Arkansas 71802
Manhattan, Kansas 66503
December 1998 - July 2001

AFFILIATIONS AND PROFESSIONAL ORGANIZATIONS:

American Association of Critical Care Nurses
Member - 1983

Emergency Department Nurses' Association
Member - 1983

American Association of Nurse Anesthetists
Associate Member - 1986; Member - 1988

Texas Association of Nurse Anesthetists
Member - 1986

Hawaii Association of Nurse Anesthetists
Member - 1989; Public Relations Committee - 1990

Kansas Association of Nurse Anesthetists
Member - 1994

Nevada Association of Nurse Anesthetists
Member – 2003

National Alliance of Certified Legal Nurse Consultants
Member – 2004

American Association of Legal Nurse Consultants
Member – 2004

APPOINTMENTS: Advanced Practice Advisory Committee
Nevada State Board of Nursing, Reno, Nevada
Appointed May 2004; Re-appointed May 2007

DECORATIONS AND AWARDS:

CIVILIAN: Elected to the *National Honor Society of Phi Kappa Phi* - 1983

Agatha Hodgins CRNA Memorial Award - 1988
Presented annually by Janssen Pharmaceutica to the Outstanding
Graduate Registered Nurse Anesthetist

MILITARY: National Defense Service Ribbon - 1971, 1991

Army Overseas Ribbon - 1991

Army Service Ribbon - 1984

Army Achievement Medal - 1986, 1988

Army Commendation Medal - 1987, 1993

Joint Services Achievement Medal - 1990

Meritorious Service Medal - 1992

Distinguished Honor Graduate
Anesthesiology for Army Nurse Corps Officers - 1987

PROFESSIONAL PRESENTATIONS: *Clinical Correlations in Anesthesia Practice for Patients
with Cardiovascular Pathophysiology*
US Army / Texas Wesleyan University Program
In Anesthesia Nursing, Phase II
Nursing Education and Staff Development
Tripler Army Medical Center, Hawaii 96859-5000
1989, 1990, 1991

Mechanical Ventilatory Support for the Chemical Casualty
Medical Management of Chemical Casualties Course
US Army Medical Research Institute of Chemical Defense
Given at the Defense Nuclear Agency, Johnston Atoll
APO San Francisco, CA 96305
20 - 22 January 1992

PROFESSIONAL PROJECTS / PUBLICATIONS:

Cox, G. H. (2005) *BREAKING THE CODE – Demystifying the Clinical Anesthesia Record*. LNC Resource, 2(7), 1, 16-17

Cox, G. H. (2006) *AWARENESS AND RECALL DURING GENERAL ANESTHESIA – A New Focus For Both Medical and Legal Professionals*. LNC Resource, 3(3), 17, 23, 27, 29

Authored the 2004 revision(s) to the Nevada State Board of Nursing *Nurse Practice Act*, Nevada Administrative Code, Chapter 632, Sections 632.500 through 632.550, *Certified Registered Nurse Anesthetists*

As a consultant, rendered an expert opinion for a Federal Health Care Facility during external professional peer review proceedings involving a Certified Registered Nurse Anesthetist, alleging professional misconduct and breach of Standards of Care

As a consultant, appeared as an expert witness and served as a primary committee member during a Root Cause Analysis Investigation of an intraoperative operating room fire with subsequent patient injury at a Federal Health Care Facility

As a consultant, rendered an expert opinion for the Nevada State Board of Nursing during an external professional peer review proceeding involving a Certified Registered Nurse Anesthetist, alleging professional misconduct and breach of Standards of Care

As a consultant, appeared as an expert witness for the Nevada State Board of Nursing during Administrative Court proceedings involving a Certified Registered Nurse Anesthetist, alleging professional misconduct and breach of Standards of Care

Currently developing and implementing the *Anesthesia Care Team Crew Resource Management Training Program* (ACTCRMTP). This is a crew resource management-based training program designed to improve the attitudes and enhance the effectiveness and safety of the multidisciplinary practitioners practicing as Anesthesia Care Team members. The target date for initial implementation of this program is August 2008.

CURRENT EDUCATIONAL PURSUIT:

Doctoral Student, Rush University College of Nursing, Chicago, Illinois; leading to the Doctor of Nursing Practice degree (DNF); anticipated graduation date, December 2008

EXHIBIT 5

AFFIDAVIT OF
DANA SUTTER, R.N.

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, Dana Sutter, am a registered nurse and have practiced in the area of nursing for over thirteen (13) years. Attached hereto as exhibit "1" is a true and correct copy of my curriculum vitae setting forth my education, training and experience as a registered nurse.

I am familiar with the standards of care for a registered nurse practicing at all times relevant to the care provided herein, including, but not limited to, the time periods from March 2004 through and including January of 2008. I am also familiar with the standards of care for the management and handling of medical devices and medications in connection with the provision of anesthetic care for patients undergoing gastroenterology endoscopic procedures at all relevant times referenced herein in my role as a circulating nurse.

I have had an opportunity to review relevant portions of the medical records of Gayndolyn Martin from the Endoscopy Center of Southern Nevada on Shadow Lane relating to Ms. Martin's colonoscopy of September 20, 2007 and EGD (esophagogastroduodenoscopy) of September 21, 2007 performed at that facility. I have also reviewed copies of her blood test results confirming her diagnosis of acute Hepatitis C, genotype 1a, together with bulletins from the Southern Nevada Health District and Centers for Disease Control and Prevention relating to its inspections and findings of the facility in question.


The standards of care in connection with the provision of anesthesia services and the management and handling of medical devices and medications mandates that strict sterile technique be implemented and followed for all patients receiving intravenous anesthetic medications. This includes, but is not limited to, utilizing aseptic technique by all health care providers while providing all types of invasive medical care and properly using medical devices and medications.

Failure of a registered nurse and/or any other health care provider(s) who participated,

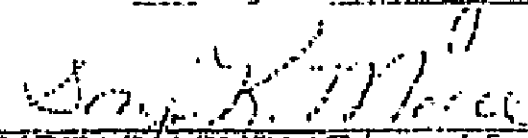
oversaw, implemented, approved or failed to take action in response to the practices referenced
respecting non-sterile anesthesia-related practices and/or inappropriate uses of medication(s)
and/or medical devices, falls below the standard of care.

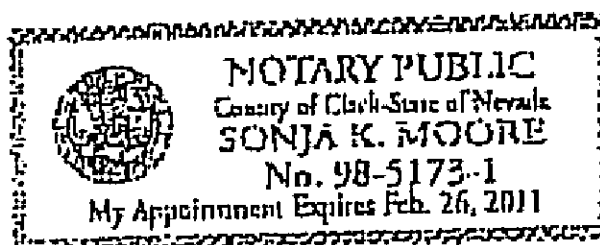
All opinions set forth herein are stated to a reasonable degree of nursing probability. I
reserve the right to alter, modify and/or change the opinions expressed herein based upon receipt
and review of additional information that may become available.

FURTHER AFFIANT SAYETH NAUGHT.


DANA SUTTER, R.N.

SUBSCRIBED and SWORN to before me
on this 5th day of May, 2008.


NOTARY PUBLIC in and for said
COUNTY and STATE



Dana N. Sutter

2104 Spencer SL, Las Vegas, NV. 89104 • 702-869-9609 • Cell- 323-270-2154 • Email- dnsutter@cox.net

Professional Qualifications

- 13 years Experience as a Registered Nurse
- 11 years Experience in the Operating Room
- Management Skills
- Information Technology Skills
- Knowledge of HSM, Vision and PHS programs for scheduling

Professional Licenses & Accreditations

- Registered Nurse Licensure in the following states: Nevada, California, Washington, Hawaii, New York, Michigan, Missouri, Pennsylvania and Washington DC.
- Certificate in Advanced Cardiac Life Support (ACLS)
- Certificate of Basic Life Support (BLS)
- Member of AORN

Education

1983-1987 Westlake High School, Westlake, CA.
Diploma

1989-1995 City College of San Francisco, San Francisco, CA.
Major in Nursing
Associates Degree of Nursing

Nov. 1997
to
Feb. 1997 Tarzana Regional Medical Center, Tarzana, CA.
Perioperative Training program
Certificate of Perioperative Nursing

Employment History

July 2007-
Present Las Vegas Regional Surgery Center, Las Vegas, NV
Director of Nursing, RN circulator
Responsible for directing and supervising nursing and ancillary personnel in planning, implementing, monitoring and evaluating patient care in the operating room according to accepted standards. Participate in the recruitment, interviewing, selection and the hiring of department employees. Demonstrates effective communication skill with staff, management, physician and patient/families. Responsible for maintaining Policies and Procedures Manual, Anesthesia and Surgeon Peer Reviews, Quarterly Reports, Infection Control Program, Environmental Safety Programs, Patient Satisfaction Surveys and Annual Inservices. Attends monthly Governing Body Meetings to discuss Quality Improvement for the facility. I have a staff of 7 RNs, 4 Surgical Techs, 1 Medical Assistant and 1 Office Manager. I also work in the role as circulator when necessary and

In any other areas of the ASC as needed. We do a variety of cases including: Endoscopy, Plastics, Bariatrics, Orthopedic and Pain Management.

Nov. 1997-
Present

Tarzana Regional Medical Center, Tarzana, CA

RN, scrub and circulate role

Organized surgical setting to allow for a safe physical environment and protection of patient. Patient advocate, independent in decision making, handled emergency situations with rigor and responsibility. Specializing in Neurosurgery, Orthopedic, Laparoscopic, Urology and General surgeries.

April 2003-
Present

North Vista Hospital, Las Vegas, NV.

Charge RN/ circulator

Responsible for preparing and conducting annual nursing competencies. Ability to oversee staff, run surgical schedule, assist surgeons with cases and any problems. As a circulator specialized in Spine, Orthopedic, Bariatric and Endoscopy. I am able to perform independently in all areas and surgical procedures and make appropriate decisions in nursing care.

October 2004-
April 2007

Valley Hospital, Las Vegas, NV.

Per Diem circulating RN and scrub

Assist the surgical team and provide patient care during the surgical procedure. Work on an as needed basis in all areas of surgical setting.

1999-
present

Traveling RN at these hospitals:

Desert Springs Hospital, Las Vegas, NV. 1999

Good Shepard Hospital, Barrington, IL. 1999

Cedar Sinai, Los Angeles, CA. 2000

Kaiser Hospital, Oakland, CA. 2000

Sunrise Hospital, Las Vegas, NV. 2001

Washington Hospital Center, Washington DC, 2001

Mercy Hospital, Bakersfield, CA. 2002

Saint Catherine's Hospital, Smithtown, NY. 2002

Long Beach Memorial, Long Beach, CA. 2003

St. Lukes Hospital, NYC, NY. 2003

Lourdes Medical Center, Cherry Hill, NJ. 2004

Ingham Medical Center, Lansing, MI. 2005

Sharp Memorial, San Diego, CA 2006

Sutter Hospital, Antioch, CA 2007

As a travelling nurse in the OR I was able to adapt quickly to new environments and function independently. Worked comfortably with co-workers and surgeons, while maintaining a professional demeanor. Responsible for both technical and behavioral nursing duties in the surgical setting. Did a variety of surgeries in a multitude of settings, while always maintaining patient safety and privacy.

References available upon request

EXHIBIT 6

AFFIDAVIT OF
DANA SUTTER, R.N.

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, Dana Sutter, am a registered nurse and have practiced in the area of nursing for over thirteen (13) years. Attached hereto as exhibit "1" is a true and correct copy of my curriculum vitae setting forth my education, training and experience as a registered nurse. I am currently the director of nursing for an outpatient ambulatory surgical center and have, at all times relevant herein, had experience in supervising nursing care applicable to the nursing care provided in this matter, including but not limited to nursing care provided to patients respecting endoscopic procedures in an outpatient setting.

This affidavit is an addendum to my affidavit previously submitted regarding Gwendolyn Martin and is meant to be incorporated by reference as though fully set forth therein. I have reviewed those items referenced in my original affidavit as well as a copy of the State of Nevada Bureau of Licensure and Certification relating to deficiencies and plans of correction for the Endoscopy Center of Southern Nevada on Shadow Lane and Burnham Avenue.

It is my opinion, to a reasonable degree of nursing probability, that any nurse, including but not limited to, Kathleen Maley, R.N., Jeff Krueger, R.N., and any other nurse who had a supervisory role at the Endoscopy Center of Southern Nevada between March 2004 through and including January of 2008, had a duty to ensure that proper policies and protocols were in place with respect to nursing care, including maintenance of aseptic technique in the management and handling of medical devices and medications. It is further my opinion, to a reasonable degree of medical probability, that any nurse who had a supervisory role at the Endoscopy Center of Southern Nevada had a duty to ensure the nursing care and treatment provided to patients, including Gwendolyn Martin, were within the standards of care and that all applicable policies and procedures were implemented and followed by nursing staff.


It is further my opinion, to a reasonable degree of nursing probability, that the supervising

nursing staff, including but not limited to, Kathleen Maley, R.N. and Jeff Krueger, R.N., breached the standards of care in failing to adequately supervise the nursing staff and ensure proper policies and protocols for nursing care were implemented and followed. Specifically, the standard of care mandates that all nursing supervisors ensure nursing staff utilizes and follows strict sterile technique for all patients receiving intravenous anesthetic medications. This includes, but is not limited to, utilizing aseptic technique by all nursing staff while providing or assisting in all types of invasive medical care and properly using medical devices and medications.

Failure of a registered nurse and/or any other health care provider(s) to adequately supervise, oversee, implement, and/or to take action in response to the practices referenced respecting non-sterile anesthesia-related practices and/or inappropriate uses of medication(s) and/or medical devices by nursing staff falls below the standard of care.


All opinions set forth herein are stated to a reasonable degree of nursing probability. I reserve the right to alter, modify and/or change the opinions expressed herein based upon receipt and review of additional information that may become available.

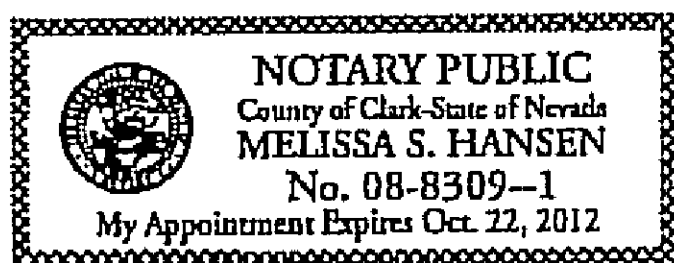
FURTHER AFFIANT SAYETH NAUGHT.

 R.N.
DANA SUTTER, R.N.

SUBSCRIBED and SWORN to before me

on this 12th day of February, 2009.


NOTARY PUBLIC in and for said
COUNTY and STATE



Dana N. Sutter

2104 Spencer St., Las Vegas, NV. 89104 • 702-869-9609 • Cell- 323-270-2154 • Email- dnsutter@cox.net

Professional Qualifications

- 13 years Experience as a Registered Nurse
- 11 years Experience in the Operating Room
- Management Skills
- Information Technology Skills
- Knowledge of HSM, Vision and PHS programs for scheduling

Professional Licenses & Accreditations

- Registered Nurse Licensure in the following states: Nevada, California, Washington, Hawaii, New York, Michigan, Missouri, Pennsylvania and Washington DC.
- Certificate in Advanced Cardiac Life Support (ACLS)
- Certificate of Basic Life Support (BLS)
- Member of AORN

Education

1983-1987 Westlake High School, Westlake, CA.
Diploma

1989-1995 City College of San Francisco, San Francisco, CA.
Major in Nursing
Associates Degree of Nursing

Nov. 1997
to
Feb. 1997 Tarzana Regional Medical Center, Tarzana, CA.
Perioperative training program
Certificate of Perioperative Nursing

Employment History

July 2007-
Present Las Vegas Regional Surgery Center, Las Vegas, NV
Director of Nursing, RN circulator
Responsible for directing and supervising nursing and ancillary personnel in planning, implementing, monitoring and evaluating patient care in the operating room according to accepted standards. Participate in the recruitment, interviewing, selection and the hiring of department employees. Demonstrates effective communication skill with staff, management, physician and patient/families. Responsible for maintaining Policies and Procedures Manual, Anesthesia and Surgeon Peer Reviews, Quarterly Reports, Infection Control Program, Environmental Safety Programs, Patient Satisfaction Surveys and Annual Inservices. Attends monthly Governing Body Meetings to discuss Quality Improvement for the facility. I have a staff of 7 RNs, 4 Surgical Techs, 1 Medical Assistant and 1 Office Manager. I also work in the role as circulator when necessary and

in any other areas of the ASC as needed. We do a variety of cases including: Endoscopy, Plastics, Bariatrics, Orthopedic and Pain Management.

Nov. 1997-
Present

Tarzana Regional Medical Center, Tarzana, CA
RN, scrub and circulate role
Organized surgical setting to allow for a safe physical environment and protection of patient. Patient advocate, independent in decision making, handled emergency situations with rigor and responsibility. Specializing in Neurosurgery, Orthopedic, Laparoscopic, Urology and General surgeries.

April 2003-
Present

North Vista Hospital, Las Vegas, NV.
Charge RN/ circulator
Responsible for preparing and conducting annual nursing competencies. Ability to oversee staff, run surgical schedule, assist surgeons with cases and any problems. As a circulator specialized in Spine, Orthopedic, Bariatric and Endoscopy. I am able to perform independently in all areas and surgical procedures and make appropriate decisions in nursing care.

October 2004-
April 2007

Valley Hospital, Las Vegas, NV.
Per Diem circulating RN and scrub
Assist the surgical team and provide patient care during the surgical procedure. Work on an as needed basis in all areas of surgical setting.

1999-
present

Traveling RN at these hospitals:
Desert Springs Hospital, Las Vegas, NV. 1999
Good Shepard Hospital, Barrington, IL. 1999
Cedar Sinai, Los Angeles, CA. 2000
Kaiser Hospital, Oakland, CA. 2000
Sunrise Hospital, Las Vegas, NV. 2001
Washington Hospital Center, Washington DC, 2001
Mercy Hospital, Bakersfield, CA. 2002
Saint Catherines Hospital, Smithtown, NY. 2002
Long Beach Memorial, Long Beach, CA. 2003
St. Lukes Hospital, NYC, NY. 2003
Lourdes Medical Center, Cherry Hill, NJ. 2004
Ingham Medical Center, Lansing, MI. 2005
Sharp Memorial, San Diego, CA 2006
Sutter Hospital, Antioch, CA 2007

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